E. EVIDENCE AFFECTING THE CREDIBILITY AND RELIABILITY OF MR. PARKER'S EXPLANATIONS.

(1) THE KWBB(TV) APPLICATION

326. The KWBB(TV) Application contained no reference to the *San Bernardino Proceeding*, Adams Exh. 50, pp. 26-28, although the *San Bernardino Review Board Order* had been released only eight months before the KWBB(TV) Application was submitted. Mr. Parker initially attributed this omission to some "oversight" by Mr. Wadlow. RBI Exh. 46, p. 6, n. 1. He also reiterated that he relied on his counsel, although he does not appear to have raised any questions about the contents of the disclosure or omissions therefrom, and he offered no explanation as to how he himself failed to notice this "oversight" before the application was filed.

327. But in his live testimony, Mr. Parker abandoned the "oversight" excuse. Instead, Mr. Parker characterized the omission of the *San Bernardino Proceeding* from the KWBB(TV) Application as a conscious decision by Mr. Wadlow, to whom Mr. Parker supposedly deferred. Tr. 1941-1942. Mr. Parker attributed authorship of the "disclosure" in the KWBB(TV) Application to Mr. Wadlow. *Id.*

328. Mr. Wadlow did not corroborate Mr. Parker's testimony. Far from claiming credit for such authorship, Mr. Wadlow testified that he could not recall even having reviewed the "disclosures". Tr. 1858.

329. Mr. Parker suggested that the *San Bernardino Proceeding* was not mentioned in the KWBB(TV) Application because it was not yet final. Tr. 1941-1942. But that excuse is inconsistent with the fact that the KWBB(TV) Application ***did*** include a reference to the

Mt. Baker Proceeding which clearly indicated that that matter was not then final. Since "non-finality" obviously did not cause the *Mt. Baker Proceeding* to be omitted from the KWBB(TV) Application, "non-finality" could not have been thought to justify the omission of the *San Bernardino Proceeding*. Mr. Parker was unable to explain this inconsistency. Tr. 1942.

330. In addressing the failure to include in the KWBB(TV) Application any reference to the issue of fraudulent conduct in the *San Bernardino Proceeding*, Mr. Parker mentioned a number of points in apparent support of his view that the *San Bernardino Review Board Decision* did not reflect a determination by the Board that he had engaged in attempted fraud before the Commission. Tr. 1945-1946. His claims are inconsistent with the evidence.

331. Mr. Parker said that "I never owned any stock in [SBBLP]." Tr. 1945. To the extent that this response was intended to mean that Mr. Parker had never owned an interest in SBBLP, it was false. According to both the *San Bernardino Initial Decision*, 2 FCC Rcd at 6566 (¶54), and the *San Bernardino Review Board Decision*, 3 FCC Rcd at 4090 (¶16), Mr. Parker ***did*** at one time own an interest in SBBLP, which he transferred to his sister and brother-in-law.

332. Mr. Parker stated that "[w]hen [SBBLP] got $850,000 [in settlement payments], I never got a dime." Tr. 1945. However, his sister and brother-in-law, to whom he transferred his ownership interest in SBBLP, ***did*** receive some 20% of the settlement proceeds. Tr. 2073.

333. Mr. Parker stated that

> no one has ever put up the thought that I have been found guilty of anything other than for purposes of the level of my activity with regard to SBB, I was found a real party in interest.

Tr. 1945. He also denied that the Review Board's reference to "attempted fraud" in the *San Bernardino Review Board Decision* had implicated him. *Id.* However, that notion cannot be squared with the unequivocal language of the *San Bernardino Review Board Decision.* Having characterized the SBBLP application as "a travesty and a hoax", the Review Board in the very next sentence labeled Mr. Parker as the "progenitor and the real-party-in-interest", the "true kingpin", of SBBLP. 3 FCC Rcd at 4090 (¶16). The Review Board concluded that SBBLP was "a transpicuous sham" and affirmed Judge Gonzalez's rejection of its "attempted fraud". 3 FCC Rcd at 4091 (¶18). Given that the Board unquestionably viewed SBBLP to be a sham facade erected by Mr. Parker for his own benefit, how could Mr. Parker even suggest that he did not believe that the Review Board's explicit, highly-charged indictment referred to him?

(2) THE WHRC(TV) APPLICATION

334. Mr. Parker offered no comprehensible explanation for the fact that the *San Bernardino Proceeding*, omitted from the 1989 applications, suddenly appeared in the 1991-1992 applications, beginning with the WHRC(TV) Application. Tr. 1957.

335. Mr. Parker claimed, in his written direct testimony, that the disclosure concerning the *Mt. Baker Proceeding* and the *San Bernardino Proceeding* in the WHRC(TV) Application "was written by an attorney." RBI Exh. 46, p. 7. Mr. Parker was notably vague about the origin of the latterday disclosure concerning the *San Bernardino Proceeding*,

and the record does not establish who prepared Mr. Parker's portion of the WHRC(TV) Application.

336. Mr. Parker testified that he believed it to have been prepared between the law firm of Brown, Finn & Nietert, which included Mr. Kravetz [66], and Mr. Mercer. Tr. 1952. Mr. Kravetz expressly denied any involvement in the preparation of Mr. Parker's portion of the WHRC(TV) Application. Tr. 2346.

337. Mr. Parker also suggested that the exhibit could have been "plagiarized" from "something Mr. Wadlow was doing" at the time. *Id.* But Mr. Wadlow testified that neither he nor anyone at his law firm was involved in any way with the preparation of the WHRC(TV) Application. Tr. 1805, 2105-2106. [67] The only attorney other than Brown, Finn & Nietert (Mr. Kravetz) and Sidley & Austin (Mr. Wadlow and colleagues) who worked on projects for Mr. Parker during the period 1990-1993 was Mr. Mercer, a non-communications attorney who represented RBI in its bankruptcy proceeding, Tr. 1897, 1997-1998. Mr. Mercer was identified as counsel for the transferee in the transmittal letter accompanying the submission of the WHRC(TV) Application. RBI Exh. 46, Attachment E,

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[66] Mr. Kravetz testified that he believed that he was the only attorney in his firm who worked on matters relating to Mr. Parker, and he was confident that he would have known if other attorneys at the firm were working on such matters. Tr. 2361-2362.

[67] Asked what document prepared by Mr. Wadlow might have been "plagiarized" for the WHRC(TV) Application, Mr. Parker referred to a disclosure statement which was prepared in the RBI bankruptcy proceeding for submission to the bankruptcy court. Tr. 1952-1954. However, upon being shown a copy of the disclosure statement actually filed by RBI with the bankruptcy court, Adams Exh. 18, Mr. Parker acknowledged that the disclosure statement did not include any reference to the *San Bernardino Proceeding*. Tr. 1955-1956. And, as noted above, the only applications in which Mr. Wadlow's firm had assisted Mr. Parker up to then, *i.e.*, the KWBB(TV) Application and the Los Angeles LPTV Application, had both omitted any reference to the *San Bernardino Proceeding*.

p. E1. Mr. Mercer was not presented as a witness.

338. If Mr. Mercer did in fact prepare the disclosure in the WHRC(TV) Application, Mr. Parker did not explain why Mr. Mercer, a non-communications attorney, would have felt the need to disclose the *San Bernardino Proceeding* when Mr. Wadlow (at least according to Mr. Parker) had not. When asked whether he thought it was strange that the *San Bernardino Proceeding* was mentioned in the WHRC(TV) Application but had not been mentioned in the KWBB(TV) Application, Mr. Parker responded, "I believe one was filed in March of '89 and the other was filed in July of '91. So it doesn't -- the answer is no." Tr. 1957.

339. But that response makes little sense, since the *San Bernardino Review Board Decision* was released only eight months before the KWBB(TV) Application, but three years before the WHRC(TV) Application. To the extent that the passage of time might have explained any difference between the two applications, the opposite occurrence would have been expected. That is, the passage of time might have accounted for the inclusion of the *San Bernardino Proceeding* in the KWBB(TV) Application filed only eight months after the *San Bernardino Review Board Decision*, but not the WHRC(TV) Application filed three years after that decision.

340. In attempting to explain his statement that he was not the holder of an interest in SBBLP when Judge Gonzalez and the Review Board had both found that he was, as a matter of fact, the real-party-in-interest in SBBLP, Mr. Parker made a number of statements. None of those statements withstands scrutiny.

341. Mr. Parker claimed that the Review Board "never allege[d] that I had some

secret hidden ownership interest." Tr. 1964. Along the same lines, he claimed that

> as I understood it, there are different levels of being a real party in interest. In other words, if I had had 20 percent ownership in this application and I was hiding that and deceiving the Commission with regard to that interest, or if I had hidden the interest in it, that would be one thing.

Tr. 1967. Those claims completely ignore the fundamental meaning of a "real-party-in-interest" issue. The issue is intended to identify the true, the "real", applicant, as opposed to the fraudulent construct presented in the application. A determination that a party is a "real-party-in-interest" is a determination that that party ***did*** hold a controlling interest in the applicant which the party was attempting to keep secret or hidden.

342. Mr. Parker claimed that "they never allege . . . I was having any money." Tr. 1964. This presumably was intended to suggest that he was not receiving payment for his involvement with SBBLP. That ignores Judge Gonzalez's finding, not disturbed in any way by any subsequent decision, that Mr. Parker wielded

> direct and indirect control over SBBLP's purse strings -- a fact clearly demonstrated by the fact that he was paid an amount in excess of that provided for in the consulting agreement without the written or prior approval of Ms. Van Osdel (Tr. 3541-41). As of the date of the hearing, Mr. Parker had been paid $153,460.35, whereas invoices totalling only $39,843.34 have been submitted by Parker and Associates (Tr. 3577-78).

2 FCC Rcd at 6567 (¶57).

343. Mr. Parker claimed that

> they never allege . . . anything other than that the applicant should have reported the level of my involvement for purposes of the application in terms of claiming integration and diversification credit.

Tr. 1964. This is an attempt to shift responsibility for the SBBLP situation from himself to

Ms. Van Osdel. Along the same lines, he claimed that "the applicant should have disclosed [his interest] in her application." Tr. 1967. He repeated this claim again several times: Tr. 1969 (". . .had [Ms. Osdel] reported [Mr. Parker's] involvement there never would have been an issue added)"; Tr. 2008 (". . . Ms. Van Osd[el] was the applicant. She didn't report me."); 2010 ("the impropriety was done by Ms. Van Osd[el] by not disclosing [Mr. Parker's involvement]"); 2085 ("it was [Ms. Van Osdel's] error in not having disclosed me in her application; and that in fact that was the limit to any problem."); 2636 ("my understanding of [the real-party-in-interest issue] was that Ms. Van Osdale should have reported my involvement beyond what she did").

344. These repeated attempts to evade responsibility smash headlong into the fact that Mr. Parker, ***not*** Ms. Van Osdel, prepared the SBBLP application. Judge Gonzalez specifically so found:

> The evidence of record demonstrates that Ms. Van Osdel was a last minute recruit to ***the SBBLP application which Mr. Parker prepared***, sponsored and controlled.

2 FCC Rcd at 6567 (¶57) (emphasis added). Far from reversing this finding, the Review Board specifically endorsed it:

> ***As the I.D. adequately chronicles, Michael Parker prefabricated the [SBBLP] application*** for Channel 30 prior to the intromission of Van Osdel, who purportedly materialized as [SBBLP]'s sole "general" partner only the day before the [SBBLP] application was filed with the FCC.

3 FCC Rcd at 4090 (¶16) (emphasis added). And after considerable obfuscation, Mr. Parker himself ultimately admitted on cross examination that the failure to disclose his involvement

in SBBLP was ***his*** fault, ***not*** Ms. Van Osdel's. Tr. 2011-2012. [68/] In light of the clear record, Mr. Parker's attempts to shift the blame from his own shoulders are not only unavailing, but strongly indicate a disingenuous effort by Mr. Parker to mislead this Court.

345. Mr. Parker claimed that he was just a "paid consultant" to SBBLP who was "fired when it became an issue." Tr. 1967. But that termination occurred ***after*** the addition of the real-party-in-interest issue in the *San Bernardino Proceeding*, 2 FCC Rcd at 6567 (¶58), and both Judge Gonzalez and the Review Board regarded that "firing" as nothing more than a cosmetic *post litem motam* ploy of little permanence or reliability, signifying nothing, 2 FCC Rcd at 6567 (¶58), 3 FCC Rcd at 4091 (¶18).

346. Mr. Parker claimed again that he received none of the settlement proceeds from the *San Bernardino Proceeding*. Tr. 1967 ("I never got a dime"). But as discussed above, this conveniently ignores the fact that his sister and brother-in-law, to whom he transferred his ownership interest in SBBLP, ***did*** participate in the settlement proceeds. Tr. 2073.

(3) THE DALLAS AMENDMENT

347. The language of the Dallas Amendment is impossible to square with the facts. It is an absolute, incontestable fact that, in the *San Bernardino Proceeding*, a disqualifying

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[68/] Asked whether he disagreed with the Review Board's determination that he had "prefabricated" the SBBLP application, Mr. Parker initially responded, "Yeah, because Van Osd[el], in order to finish the application, you had to have Van Osd[el] there and her qualifications." Tr. 1970. Later, after demonstrating reluctance to acknowledge that he himself had in fact prepared the SBBLP application, *see* Tr. 2008-2009 ("Your interpretation is one way; mine's another"), Mr. Parker finally acknowledged that he had done so. Tr. 2011-2012.

real-party-in-interest issue was both sought ***and*** added against SBBLP. That issue was then litigated and resolved adversely to SBBLP. Any suggestion that that did not happen is affirmatively misleading.

348. In his testimony in the instant proceeding, Mr. Parker commenced by ignoring the language of the Dallas Amendment. His direct written testimony made no reference to that language. Instead, he referred to a conversation he supposedly had with Mr. Kravetz in which Mr. Parker "indicated that there were no unresolved character issues pending when the applications to which I was a party were dismissed." RBI Exh. 46, p. 8. But whatever Mr. Parker may have said in one or another conversation, that is not what was reported in the Dallas Amendment over Mr. Parker's signature.

349. Mr. Kravetz, who drafted the Dallas Amendment on the basis of information provided to him by Mr. Parker (or an associate of Mr. Parker's), testified that Mr. Kravetz "certainly would not have" drafted the Dallas Amendment as it was submitted had Mr. Kravetz been aware of the *San Bernardino Proceeding*. Tr. 2373. Instead, Mr. Kravetz would have provided a detailed summary of that proceeding. *Id.* Similarly, when Mr. Wadlow was asked whether he had ever advised Mr. Parker that no character issues had been added against SBBLP in the *San Bernardino Proceeding*, he stated that "I can't believe I would have". Tr. 1813. Asked to explain, he answered, "Because I'm aware that one was." *Id.*

350. Confronted with the disjuncture between the Dallas Amendment and reality, Mr. Parker first claimed that he really didn't understand the *San Bernardino Proceeding* to have been included within the universe of applications covered by the Dallas Amendment.

Tr. 1986-1988. This absurd claim is not supported by the language of the Dallas Amendment or by any other evidence. In fact, Mr. Parker himself seemed to abandon this approach over the course of his testimony.

351. His next claim was that the Dallas Amendment was intended to convey that any and all disqualifying issues concerning, *inter alia*, SBBLP had been resolved by the time its application was dismissed. According to Mr. Parker, the disqualifying issues in the *San Bernardino Proceeding* had been resolved favorably to him in the *San Bernardino Review Board Decision*, and the discussion concerning SBBLP in that decision was limited to comparative matters only. Tr. 2027-2028, 2064-2067, 2070.

352. This claim flies in the face of the Review Board's language as well as Mr. Parker's own testimony. Under the real-party-in-interest issue, Judge Gonzalez had specifically and expressly held SBBLP to be disqualified because of Mr. Parker's undisclosed involvement in SBBLP. 2 FCC Rcd at 6567 (¶¶57, 60). The Review Board specifically and expressly "adopt[ed] the ALJ's findings and conclusions, except as modified" in the *San Bernardino Review Board Decision*. 3 FCC Rcd at 4085 (¶1). Accordingly, to establish the validity of his claim Mr. Parker would have to demonstrate that the Review Board did modify the disqualification of SBBLP some way, somehow, in the *San Bernardino Review Board Decision*.

353. Far from modifying that disqualification, the Review Board specifically endorsed Judge Gonzalez's resolution of the real-party-in-interest issue:

> After finding that significant and material questions of fact surrounded [SBBLP]'s claim that Van Osdel was the sole controlling party in its application, the ALJ added against [SBBLP] the aforementioned real-party-in-interest issue. . . . Having reviewed, in totality, the underlying record on this

> matter, we find no error in the ALJ's core conclusion that Van Osdel is neither the sole nor dominant management figure purported by [SBBLP], but a convenient vizard. She can claim no serious or material role in [SBBLP]'s most elementary affairs. [SBBLP] is a transpicuous sham [citation omitted], and the ALJ justly rejected its attempted fraud. [footnote omitted]

3 FCC Rcd at 4091 (¶18), 4105 (n. 21). When the Board, referring specifically to the real-party-in-interest issue, stated that the Board "can find no error", that language cannot mean that the Review Board was reversing Judge Gonzalez's decision in any respect. This is over and above the Review Board's other singularly harsh language (*e.g.*, "travesty", "hoax", "attempted fraud", "transpicuous sham") concerning SBBLP.

354. Had the Review Board intended to reverse the disqualification of SBBLP, the *San Bernardino Review Board Decision* demonstrates how such reversal would have been effected. Judge Gonzalez did disqualify one other competing applicant, Sandino. 2 FCC at 6565 (¶43), 6594 (¶324). The Review Board reversed that disqualification, 3 FCC Rcd at 4089-4090 (¶¶12-14), stating:

> . . . we find that the ALJ's disqualification of Sandino from this proceeding was error. . . . [W]e find no deliberate misrepresentation or lack of candor on Sandino's part. We therefore grant its exceptions. . .

Id. at 4090 (¶14). Thus, when the Review Board chose to reverse a disqualification ruling, it did so clearly, expressly and in no uncertain terms. The parties were not left to guess about the Review Board's intention.

355. The *San Bernardino Review Board Decision* contains no equivalent language concerning Judge Gonzalez's disqualification of SBBLP. This further discredits Mr. Parker's claim that he thought that the Review Board had resolved the real-party-in-interest issue favorably to SBBLP.

356. Finally, Mr. Parker's own direct written testimony states that "[a]lthough [SBBLP] could have asked for the earlier Review Board decision to be vacated as part of the settlement of the [San Bernardino] case, it did not do so." RBI Exh. 46, p. 2. If Mr. Parker believed that the Review Board resolved the SBBLP real-party-in-interest issue favorably to SBBLP, why would that decision have to be vacated?

357. Mr. Parker's third explanation for the Dallas Amendment was that he believed that the Review Board's approval of the San Bernardino settlement confirmed that the disqualifying real-party-in-interest issue had been resolved favorably to SBBLP. According to Mr. Parker, he "believed that the Commission's rules did not permit a disqualified applicant to receive a settlement payment." RBI Exh. 46, p. 4; *see also* Tr. 2070.

358. The record establishes that Mr. Parker has provided extensive consulting services to a range of broadcast-related applicants since 1980. *E.g.*, RBI Exh. 46, p. 1; Tr. 1962-1963. The Presiding Judge remarked to Mr. Parker, "I know that you are a person who is pretty familiar with broadcasting applications." *Id.* But throughout the entire timespan of that consulting career, the Commission's policy has continuously and consistently been precisely the opposite of what Mr. Parker claims to have believed. *See Allegan County Broadcasters, Inc.*, 83 FCC2d 371, 48 RR2d 941 (1980). The *Allegan County* decision was cited in no fewer than 37 decisions prior to the date of the Wadlow Letter. [69/]

[69/] A Lexis shepardization of the *Allegan County* citation produced a listing of some 37 decisions in which the *Allegan County* decision was cited between 1980 and 1990.

(4) THE WADLOW LETTER AND ADVICE OF COUNSEL

359. While Mr. Parker sought to paint himself as a guileless client relying entirely on the advice of numerous counsel, the record evidence contradicts that depiction.

360. Mr. Parker placed primary reliance on the February 18, 1991 Wadlow Letter. *E.g.*, Tr. 2638-2639. He mentioned oral advice received from Mr. Wadlow, but was unable to provide ***any*** detail about when such advice was given or the circumstances under which it was given. Tr. 2012.

361. For his part, Mr. Wadlow testified that he could not recall "ever tell[ing] Mr. Parker that the real party in interest issue was, in fact, resolved in his favor." Tr. 1856.

362. Mr. Parker also referred to advice he had received from other counsel who supposedly seconded Mr. Wadlow's advice. *E.g.*, Tr. 2657. But as noted above, the only counsel who represented Mr. Parker during the period 1990-1993 were Mr. Wadlow's firm, Mr. Kravetz [70/] and Mr. Mercer. Tr. 1897, 1997-1998. Since Mr. Mercer was not a communications attorney, Tr. 1997, he presumably would not have given any advice concerning the meaning of Review Board decisions, and the record does not reflect any such advice from him. No evidence indicated that Mr. Kravetz provided any such advice.

363. In this absence of evidence, the record reflects that Mr. Parker spoke only with Mr. Wadlow, and possibly other attorneys at Sidley & Austin, and that Mr. Wadlow provided the Wadlow Letter. Since Mr. Parker was unable to provide any detailed

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[70/] Mr. Kravetz was with the firm of Brown, Finn & Nietert. He testified that he was the only attorney in that firm who worked on broadcast-related matters, Tr. 2344, and he did not believe that anyone else at the firm worked on matters relating to Mr. Parker's broadcast interests, Tr. 2361-2362.

information concerning any oral advice he may have been given, the Wadlow Letter constitutes the only substantial evidence of any such advice. As detailed below, the record establishes that the Wadlow Letter was patently incorrect and that Mr. Parker, a person familiar with broadcast applications, knew or should have known that. Moreover, evidence relative to a post-license term letter signed by Mr. Parker undermines the credibility of his vague testimony concerning the supposed unanimity of advice he supposedly received concerning the status of his qualifications before the Commission.

(a) *THE CREATION OF THE WADLOW LETTER*

364. The Wadlow Letter was created at the request of Mr. Parker. Tr. 1807. Mr. Parker called Mr. Wadlow and told him that he needed a letter in a hurry to show the impact on Mr. Parker of the *San Bernardino Proceeding* to a third party, perhaps a bank or a potential investor,. *Id.*; Tr. 1866, Tr. 2002-2003.

365. The letter was written in the first person plural (*i.e.*, "you have asked ***our*** opinion"; "***we*** were counsel"; "it is ***our*** opinion"; "***we*** have reviewed the decision"; etc.). Adams Exh. 58, p. 1 (emphasis added). [71/] However, Mr. Wadlow did not deem the Wadlow Letter to be a "formal opinion letter" because of the "apparent haste" in which it was written and the "letter itself". Tr. 1810. The total time spent by Mr. Wadlow in speaking with Mr. Parker, drafting the Wadlow Letter, and then "getting the letter out", amounted to 45 minutes. *E.g.*, Tr. 1808; Adams Exh. 59.

366. The Wadlow Letter specifically stated that "we have reviewed the decision" in

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[71/] According to Mr. Wadlow, the first person plural pronouns were intended to refer to him. Tr. 1809.

the *San Bernardino Proceeding*, referring apparently to the *San Bernardino Initial Decision*. Adams Exh. 58. But because "the whole process" of preparing the letter "was done in 45 minutes", Mr. Wadlow doubted that he reviewed the *San Bernardino Initial Decision* in preparing of the Wadlow Letter. Tr. 1831. He did not recall whether he reviewed the *San Bernardino Review Board Decision* at that time. *Id.*

367. While Mr. Wadlow was not able to recall specifically the conversation in which Mr. Parker requested the Wadlow Letter, Mr. Wadlow acknowledged that Mr. Parker may have been "looking for something to show [some third party] to say that, well, you don't have to worry about [the *San Bernardino Proceeding*]." Tr. 1866.

(b) ***THE WADLOW LETTER IS WRONG ON ITS FACTS.***

368. The Wadlow Letter on its face is plainly wrong. According to the Wadlow Letter, Judge Gonzalez "did not find that [Mr. Parker] had done anything irmproper [sic] or that anything [he] had done reflected adversely on [him]." Adams Exh. 58, p. 1. But clearly Judge Gonzalez had disqualified SBBLP because of Mr. Parker's improper involvement with SBBLP. 2 FCC Rcd at 6565-6567 (¶¶45-61).

369. Mr. Wadlow grudgingly acknowledged that the Wadlow Letter was not accurate in that regard. Tr. 1822. During cross examination Mr. Wadlow's attention was directed in particular to Paragraphs 57-60 of the *San Bernardino Initial Decision*. He was then asked whether he would agree that, in light of those paragraphs, the Wadlow Letter was inaccurate when it stated that Judge Gonzalez had not found that Mr. Parker had done anything improper. After beating around the bush for a while, Mr. Wadlow finally answered the question obliquely: "I think the conclusion [in the Wadlow Letter], other than the

reference to the ALJ, is accurate." Tr. 1822. But since the Wadlow Letter addressed **nothing but** the ALJ, Mr. Wadlow's response was a tacit concession that the Wadlow Letter was, on its face, inaccurate.

370. This concession by Mr. Wadlow should not have been difficult for him, as he had previously argued, to the Review Board, that Mr. Parker's conduct in the *San Bernardino Proceeding* had been held by Judge Gonzalez, correctly, as disqualifying. In the *San Bernardino Proceeding* Mr. Wadlow represented Inland Empire Television ("Inland Empire"), one of the competing applicants. 3 FCC Rcd at 4085; 5 FCC Rcd at 5331. On behalf of Inland Empire in the *San Bernardino Proceeding*, Mr. Wadlow participated in a "Reply to Exceptions" submitted to the Review Board. That Reply included this argument:

> The record unequivocally demonstrates that Parker: (1) identified the broadcasting opportunity and found an applicant; (2) created the corporate documents, partnership documents and offering circulars for the applicant; (3) prepared the application and programming proposal; (4) signed up Ms. Van Osdel; (5) transferred his equity interest to his relatives as he has done with his other broadcast projects; (6) arranged to be retained as consultant, enabling him to receive handsome consulting fees; (8) hired the attorneys; (9) hired the engineers; (10) secured the financing; (11) dealt with the equipment supplier; (12) promoted the project and sold it to the investors; (13) maintained the relationship with corporate and communications counsel during the processing of the application; and (14) controlled the applicant's books. [citation omitted] ***As a result, the ALJ was certainly correct in his conclusions that SBBLP should be disqualified*** or, at the very least, denied any integration credit. [citations omitted]

Adams Exh. 61, p. 6 (emphasis added).

371. Having argued emphatically that Judge Gonzalez was "certainly correct" that "SBBLP should be disqualified" because of the litany of Mr. Parker's involvement in SBBLP, Mr. Wadlow could not perform a 180° turn and claim now that the Wadlow Letter was factually correct in its assertion that Judge Gonzalez did not find that Mr. Parker had

done anything improper or that anything Mr. Parker had done reflected adversely on Mr. Parker.

372. Mr. Parker acknowledged that, in the *San Bernardino Proceeding*, Judge Gonzalez had found him to be the real-party-in-interest in SBBLP and had, as a result, disqualified SBBLP. Tr. 1923. After considerable circumlocution, Mr. Parker did grudgingly acknowledge that Judge Gonzalez's decision indicated that he had done something improper. Tr. 2007-2010. [72/] Thus, both Mr. Wadlow and Mr. Parker knew, or should have known, that the Wadlow Letter was factually inaccurate.

(c) *MR. WADLOW'S EXPLANATIONS*

373. After acknowledging that the Wadlow Letter was not accurate, Mr. Wadlow attempted to explain "what was in my mind at the time". He said:

> what was in my mind at the time, I am sure, is the situation that was extant in 1991. And that was after the AL- -- after the review board had approved the settlement and had denied the application. Not dismissed it as disqualified. And had even approved a payment of $850,000 to that applicant. And, I might add, awarded the license, construction permit to an applicant, another applicant that the ALJ had found disqualified.

Tr. 1823. None of this explanation, offered long after the Wadlow Letter was prepared, is apparent on the face of the Wadlow Letter or even reasonably inferrable from the Wadlow

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[72/] To say that Mr. Parker's acknowledgement was grudging is an understatement:

> I suppose looking back on it now, studying every word of the judge's decision, you could make the case that he said I had done something improper.

Tr. 2010. Mr. Parker did not explain why he had to "study[ ] every word" of Judge Gonzalez's decision to determine that the disqualification of SBBLP under the real-party-in-interest issue indicated that he had done something improper.

Letter.

374. Mr. Wadlow's explanation consists of three separate, disparate considerations which supposedly influenced him to believe that, by 1991, all outstanding issues had been resolved favorably to Mr. Parker. Those three considerations were (a) the fact that, in the *San Bernardino Review Board Decision*, the Board had "denied" rather than "dismissed" the SBBLP application; (b) the fact that, in October, 1990, the Board approved a settlement which included a payment to SBBLP; and (c) the fact that the successful applicant in the *San Bernardino Proceeding*, Sandino, had initially been disqualified by Judge Gonzalez.

375. With respect to the "deny/dismiss" distinction, Mr. Wadlow testified that when an applicant is found to be disqualified, its application is "dismissed", but when a competing application is granted, the other presumably qualified applicants are "denied". Tr. 1828-1829. Since, in the *San Bernardino Review Board Decision*, the SBBLP application was "denied", Mr. Wadlow claimed that that might have indicated that the Board had reversed Judge Gonzalez's disqualification of SBBLP. Tr. 1826. Mr. Wadlow's attention was directed to the Review Board's language vis-à-vis Sandino, in which the Board specifically and expressly reversed Judge Gonzalez's disqualification of Sandino. *Id.* Mr. Wadlow was unable to point to any equivalent language concerning SBBLP. *Id.* [73/]

[73/] Mr. Wadlow's attempted distinction between "denial" and "dismissal" of applications is not consistent with considerable precedent. *See, e.g., Shawn Phalen*, 7 FCC Rcd 3122 (Rev. Bd. 1992) (application of comparative applicant, held to have engaged in disqualifying "real-party-in-interest" misconduct, "denied"); *Las Americas Communications, Inc.*, 1 FCC Rcd 786, 791, 796 (Rev. Bd. 1986) (application of applicant, disqualified under four separate issues and "exclude[d]" from comparative consideration, "denied"); *Colonial Communications, Inc.*, 4 FCC Rcd 5969, 5978, 5981 (ALJ Sippel 1989) (application of disqualified applicant "denied"); *Perry Television, Inc.*, 4 FCC Rcd 4603, 4620 (ALJ Sippel 1989) (application of disqualified applicant "denied").

376. Mr. Wadlow's attention was also directed to the following language from the *San Bernardino Review Board Decision*:

> Having reviewed, in totality, the underlying record on [the SBBLP real-party-in-interest issue], we find no error in the ALJ's core conclusion that Van Osdel is neither the sole nor dominant management figure purported by SBB, but a convenient vizard. She can claim no serious or material role in SBB's most elementary affairs. SBB is a transpicuous sham, [citation omitted] and the ALJ justly rejected its attempted fraud.

3 FCC Rcd at 4091 (¶18). Mr. Wadlow was asked whether that language indicated a reversal by the Review Board of Judge Gonzalez's disqualification of SBBLP. Tr. 1825. Mr. Wadlow responded:

> As I testified I don't really recall much about drafting the 1981, 1991 letter, excuse me. I am aware that just three months before, the other review board decision had come down. I don't recall having a review at that time of this review board decision.

Tr. 1825.

377. Mr. Wadlow's attention was also directed to the fact that, in finally disposing of the *San Bernardino Proceeding* by approval of the settlement, the Review Board had "dismissed" the SBBLP application. Tr. 1829. Mr. Wadlow responded:

> Yes, but the settlement was approved and payments were made to all those other applications. And in that context, my recollection of the law is the payments could not be made to a disqualified applicant.
>
> Q When did you learn that?
>
> A That's my recollection of the law.

Tr. 1829-1830. Mr. Wadlow acknowledged that, other than that the Board had approved a settlement in the *San Bernardino Proceeding*, no language in the Review Board's order approving that settlement indicated that the Board had determined that SBBLP was qualified.

Tr. 1830-1831. Mr. Wadlow, an eminent FCC practitioner, claimed to be unaware of *Allegan County, supra*, the Commission's oft-cited 1980 decision which held precisely the opposite of what Mr. Wadlow claimed to have believed the law to be. Tr. 1830.

378. While Mr. Wadlow observed that the successful applicant in the *San Bernardino Proceeding* had been disqualified by Judge Gonzalez, Judge Gonzalez's decision affecting that particular applicant, Sandino, was expressly reversed by the Review Board. 3 FCC Rcd at 4090. As noted above, Mr. Wadlow could find no equivalent language concerning SBBLP. Tr. 1826.

(d) *THE CHRISTINE SHAW SITUATION*

379. Both Mr. Parker and Mr. Wadlow claimed to believe that, as of February, 1991, the real-party-in-interest issue had been resolved favorably to Mr. Parker, Tr. 1854, 1963-1964, although Mr. Wadlow could not recall ever so advising Mr. Parker. Tr. 1856.

380. Curiously, the record reflects that within a week of the preparation of the Wadlow Letter on February 18, 1991, both Mr. Parker and Mr. Wadlow had substantial reason to believe that the Commission ***would*** be ***very*** interested in being alerted to such a history of real-party-in-interest misconduct. They also had substantial reason to believe that, if the Commission were alerted to such a history, the Commission would not be willing to grant applications in which the real-party-in-interest wrong-doer was a party.

381. MM Docket No. 86-173 ("the *Avalon Proceeding*") was a comparative broadcast proceeding involving mutually exclusive applications for a television construction permit in Avalon, California. One of the competing applicants was Christine E. Shaw. *See* Adams Exh. 85. Mr. Parker was a consultant for Ms. Shaw in connection with her Avalon

application. Tr. 2037.

382. In the *Avalon Proceeding*, a competing applicant had moved to enlarge the issues against Ms. Shaw to include a real-party-in-interest issue and a financial issue. Adams Exh. 85. Judge Luton, who presided over the Avalon Proceeding, denied the motion with respect to the real-party-in-interest issue, finding that the moving party's arguments "lack[ed] logical force, and rest[ed] on nothing more than suspicion, speculation and surmise." *Id.* Judge Luton concluded that "[n]o real-party-in-interest issue is warranted." *Id.*

383. Judge Luton did, however, add the requested financial issue. *Id.* As Ms. Shaw's consultant, Mr. Parker was involved in the litigation of the financial issue, including testifying at the hearing. Tr. 2037. In his role as consultant for Ms. Shaw, Mr. Parker had occasion to read Judge Luton's order denying the requested real-party-in-interest issue. Tr. 2037-2038.

384. Mr. Parker testified that he recalled that Ms. Shaw had ultimately sought voluntary dismissal of her Avalon application. Tr. 2039. Shown a copy of Judge Luton's Memorandum Opinion and Order dismissing the Shaw application, Adams Exh. 86, Mr. Parker agreed that that order dismissed Ms. Shaw's application but expressly held that Ms. Shaw was "qualified to be a Commission licensee." Adams Exh. 86, p. 2. The order dismissing Ms. Shaw's application but finding her qualified to be a licensee was released on August 24, 1990. Adams Exh. 86, p. 1.

385. Three months later, in November, 1990, Mr. Parker assisted Ms. Shaw in the

preparation of an application to acquire Station KCBI in Dallas. [74/] Ms. Shaw's application to acquire Station KCBI was filed with the Commission on November 30, 1990. Adams Exh. 81, p. 1. Mr. Parker advised Ms. Shaw that her application to acquire Station KCBI would be successful because he thought "she had a clean bill of health coming out of Avalon." Tr. 2060; *see also* Tr. 2049.

386. Mr. Wadlow and his colleagues at Sidley & Austin also represented Ms. Shaw in her proposed acquisition of Station KCBI. [75/]

387. According to bills sent to Mr. Parker by Mr. Wadlow in connection with Ms. Shaw's KCBI application, on February 21, 1991, Evan D. Carb, who is identified in the Sidley & Austin bills by his initials "EDC", *see, e.g.*, Tr. 1839, spoke with the Chief of the Hearing Branch concerning a "delay in grant" of that application. Adams Exh. 78, p. 3. According to the bill, Mr. Carb also spoke with Mr. Parker and Mr. Wadlow (who was

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[74/] This Station KCBI is the same station which Mr. Parker himself acquired in 1992. As set out in more detail above, while Ms. Shaw filed for consent to acquire Station KCBI in November, 1990, her application was never granted because of Commission concerns about possible real-party-in-interest misconduct arising from the *Avalon Proceeding* -- notwithstanding the fact that Judge Luton, in the *Avalon Proceeding* had flatly rejected the addition of a real-party-in-interest issue and had expressly found Ms. Shaw to be qualified. After her application to acquire Station KCBI had been pending, without action, for more than 18 months, Ms. Shaw assigned her right to acquire the station to Mr. Parker. *See* Adams Exh. 54, p. 16.

[75/] It is not clear whether Sidley & Austin represented Ms. Shaw directly, or whether they represented Mr. Parker in his capacity as Ms. Shaw's consultant. Mr. Parker stated that Mr. Wadlow had represented Ms. Shaw. Tr. 1978. While Mr. Wadlow recalled working for Mr. Parker in connection with Ms. Shaw, he did not recall having had an attorney-client relationship with Ms. Shaw. Tr. 1831. Sidley & Austin bills reflect substantial amounts of time and expenses charged to Mr. Parker during the period February, 1991-August, 1991 in connection with Ms. Shaw's KCBI application. Adams Exhs. 78-80, 82-83.

identified in the bills as "RCW", Tr. 1808) about the same. *Id.* [76/]

388. The billing entries for February 25, 1991, reflect conferences including Messrs. Wadlow, Parker and Carb concerning "delay in FCC processing of KCBI assignment application." *Id.* The same entries include a reference to "Hearing Branch investigation of real party in interest allegations from old Avalon proceeding." *Id.* The billing entry for the next day, February 26, 1991, reflects a further teleconference between Messrs. Wadlow and Parker concerning Ms. Shaw's KCBI application. *Id.* Mr. Parker testified that he learned of the problems with the application shortly after they came up, and in any event no later than February 25, 1991. Tr. 2051-2052.

389. So within one week of the Wadlow Letter, Messrs. Parker and Wadlow knew that Commission staffmembers were investigating real-party-in-interest charges which had previously been raised, and summarily rejected, in the Avalon hearing proceeding. Moreover, there were alerted to the fact that, because of that investigation, action on Ms. Shaw's KCBI application would be delayed.

390. The *San Bernardino Proceeding* stood in sharp contrast to Ms. Shaw's experience before Judge Luton. Where Judge Luton in Avalon had refused even to add a requested real-party-in-interest issue, Judge Gonzalez in *San Bernardino* had not only added

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[76/] Mr. Wadlow indicated that he had no independent recollection of matters shown on the Sidley & Austin bills, but that "[t]o the extent the billing records reflect such conversations, I'm sure they happened". Tr. 1839. *See also* Tr. 1846 ("Q: So if [the bills] reflect time entries for you involving conversations with Mr. Parker, you would believe that you, in fact, had conversations with Mr. Parker on the dates indicated? A: Yes."). For his part, Mr. Parker stated that "I would have reviewed these [Sidley & Austin] bills at the time they came in. And if I had a disagreement with them, I would have raised it. So I have ever[y] reason to believe that they are accurate." Tr. 2052-2053.

such an issue, but had decided it resoundingly against Mr. Parker on basic disqualifying grounds. Where Judge Luton had affirmatively and unequivocally held Ms. Shaw to be qualified, the Review Board had seconded Judge Gonzalez's conclusions with its own stinging language. It is inconceivable that Mr. Parker and Mr. Wadlow did not recognize that the Shaw situation completely undermined any shred of validity that the Wadlow Letter might have claimed.

391. The Sidley & Austin bills for March and April, 1991, refer to teleconferences or other communications on no fewer than 11 different days between Mr. Parker and Sidley & Austin counsel concerning Ms. Shaw's KCBI application. Adams Exhs. 79-80. These bills reflect that Mr. Wadlow was speaking not only with Mr. Parker and other Sidley & Austin attorneys, but also with Commission staff concerning the application. Adams Exh. 80, pp. 2 (entry for 4/8/91), 3 (entry for 4/10/91). The entry for April 10, 1991 for Mr. Carb includes the following language: "review language from Avalon case denying real party in interest issue. Discuss same with Mr. Parker". *Id.*

392. By letter ("Bureau Letter Inquiry") dated June 20, 1991, a member of the staff of the Hearing Branch of the Mass Media Bureau's Enforcement Division sent a letter of inquiry to Ms. Shaw. Adams Exh. 81. The Bureau Letter Inquiry concerned Ms. Shaw's KCBI application. *Id.* The letter stated that the staff was unable to make the public interest finding necessary for a grant of that application because of questions of who really controlled Ms. Shaw's application. *Id.* [77] Those questions referred repeatedly to matters raised in the

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[77] According the Bureau Letter Inquiry, the Bureau believed that the real-party-in-interest in Ms. Shaw's KCBI application might be Dr. Eugene Scott. Adams Exh. 81,

(continued...)

Avalon proceeding. *Id.*, pp. 3-5. Copies of the Bureau Letter Inquiry were faxed to Mr. Parker by Mr. Carb on June 20, 1991. *Id.*, pp. 6, 7.

393. The Sidley & Austin bill covering late June-July, 1991, discloses at least five additional communications about the Shaw application between Sidley & Austin attorneys and Mr. Parker between June 27, one week after receipt of the Bureau Letter Inquiry, and July 11, 1991. Adams Exh. 82.

394. The WHRC(TV) Application, which omitted any reference to a disqualifying real-party-in-interest issue in the *San Bernardino Proceeding*, was signed by Mr. Parker on July 19, 1991 and filed on July 24, 1991. Adams Exh. 51.

395. The bill covering August, 1991, shows yet another teleconference between Mr. Wadlow and Mr. Parker on August 7, 1991 charged to the KCBI account. Adams Exh. 83.

396. The Sidley & Austin bills indicate substantial time devoted by Mr. Wadlow to Ms. Shaw's KCBI application, including conversations or meetings with Commission staffpersons (*see* Adams Exh. 80, p. 2, 4/9/91 entry; p. 3, 4/10/91, 4/24/91 entries; p. 4, 4/25/91 entry). Entries for April 3, 1991 (Adams Exh. 80, p. 2) reflect that Mr. Carb conferred with Mr. Wadlow concerning the "KCBI and Avalon proceedings". Multiple additional entries reference research and/or discussions including Sidley & Austin personnel concerning the Avalon case. Adams Exh. 80, p. 3-4, 4/10/91 entry; p. 4, 4/22/91 entry;

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[77](...continued)
p. 1. That is the same Dr. Gene Scott whose programs were broadcast on Station WTVE(TV), without payment to RBI, at Mr. Parker's insistence. *See, e.g.*, Paragraph 45, above.

pp. 4-5, 4/25/91 entry; p. 5, 4/26/91 entry).

397. During cross examination, Mr. Wadlow professed not to recall any details concerning the Avalon proceeding. Tr. 1844. He also claimed no recollection of speaking with Mr. Parker after receipt of the Bureau Letter Inquiry. Tr. 1845. He also claimed not to recall whether Mr. Parker had ever asked him if the situation relating to Ms. Shaw's KCBI application affected Mr. Wadlow's advice concerning the effect of the *San Bernardino Proceeding* on Mr. Parker's qualifications. Tr. 1846-1847.

398. Mr. Parker similarly professed not to recall any details about Ms. Shaw's KCBI application:

Q Can you tell the Court whether [Ms. Shaw's KCBI application] was ultimately successful?

A No, it was not.

Q Can you state why?

A All I remember was she ran into problems at the Commission.

Q Do you know what kind of problems she ran into with the Commission?

A I'd have to go back and review those records. I know she was in -- she had problems sufficient that she didn't want to go forward.

Q Do you recall that her problems related to allegations of real party in interest misconduct?

A I don't recall that, no.

Q You don't recall that at all?

A Again, I know she had problems at the Commission. What I remember was she didn't want to go forward with it. I don't doubt if you're saying that was the problem that it undoubtedly was the problem, but you asked for my memory of it. I don't really recall is other than she did not want to go forward.

Tr. 2049-2050.

399. Mr. Parker also professed not to recall any conversations he had with any Sidley & Austin personnel about Ms. Shaw's application. Tr. 2052 ("Let's make it clear. I don't recall any conversations with Mr. Wadlow about [the Shaw KCBI application]"); 2059-2060.

400. In July, 1992, Ms. Shaw's KCBI application was still pending before the Commission. At that time Mr. Parker acquired from Ms. Shaw her right to purchase Station KCBI. Tr. 2054. He then filed his own KCBI Application, which was granted in October, 1992. Adams Exh. 56. Once Mr. Parker had acquired Station KCBI, the station began to broadcast the programming of Dr. Gene Scott 24-hours per day, seven days per week. Tr. 2056.

(e) *THE GAULKE LETTER*

401. As discussed above, Mr. Parker testified that "none of [his legal counsel] disagreed with Mr. Wadlow's conclusion" concerning the status of Mr. Parker's qualifications before the Commission. Tr. 1997. Also as discussed above, he offered no independent support for that claim. During discovery directed by RBI to Telemundo in connection with the Phase III Issue, however, a letter was produced which indicated that Mr. Parker ***had*** been advised, by counsel, of outstanding questions concerning his character.

402. This letter appears in the record as Bureau Exhibit 1. This letter ("the Gaulke Letter"), dated October 8, 1998, is from Mr. Parker to Ann Gaulke, Vice President, Affiliate